8.8.2008 Present: Mr. Ramakant Sharma, counsel for the petitioner.

Mr. A.K.Vashishta, counsel for respondent No. 1.

Mr. Vikram Thakur, vice Mr. Shrawan Dogra, counsel for respondent No. 2.

Heard. The learned trial Court has shown a total lack of application of mind to the law and facts involved in the case. In interim proceedings under Order 39 Rules 1 and 2 of the Code of Civil Procedure, the trial Court passed an order on 8.11.1996 directing that the respondent – defendant is restrained from making additions, alterations, renovations, digging and also transferring or handing over the possession of the premises to any other person etc. The Court further added that the respondent will be at liberty to carry out construction as per compromise entered into between the parties etc. In an appeal carried by the defendant-respondent, this order was modified to the extent that the learned Additional District Judge directed that the defendant shall have the right to make additions, alterations and renovation in the ground floor of the premises without causing any loss or damage to the plaintiffs' property. The other part of the order was kept intact. Civil Revision 120 of

2001 preferred by the plaintiff in this Court was dismissed as being not maintainable in law. These facts are undisputed and contained in judicial orders.

Subsequently, the plaintiff moved the trial Court in an application under Section 151 of the Code of Civil Procedure praying that necessary directions be issued to the Deputy Commissioner, (Collector), Shimla, exercising powers of the Registrar under the Indian Registration Act, to make certain entries in the record of rights and all other records showing the confirmed interim order as made so that no further registration etc. takes place. The learned Court in a long winded judgment, without regard to the facts and law, has dismissed the application solely on the ground that proceedings under Order 39 Rule 2-A have been dismissed by the Court. Learned counsel appearing for the petitioner submits that no such proceedings were in fact taken. This shows a total non application of mind on the part of learned Presiding Officer. His other observations made in the order that the application under Section 151 of the Code of Civil Procedure is not maintainable, cannot be accepted. The only prayer sought for by the petitioner in this application was a direction

to the Registering Authority, Shimla to obey the interim injunction as confirmed by this Court. Surely, it was the duty of Court to ensure compliance of the interim order of injunction as confirmed in order to shorten the litigation. Learned counsel also makes a grievance that the order of injunction has been disobeyed by the respondents during the pendency of this appeal. If that be so, it would be open to the petitioner herein to take proceedings in accordance with law. This revision petition is accordingly allowed. The order passed by the Civil Judge (Junior Division), Court No. 3, Shimla in CMA No. 24-6/2008 is quashed and set aside. A direction is issued to the Deputy Commissioner, Shimla to have the interim order recorded as prayed for by the petitioner herein. A direction is issued to the Registry to convey the interim order to the authorities with the further direction that it be punctually obeyed. The revision petition is disposed of. Pending application(s) shall stand disposed of.

August 8, 2008 (PC). (Dev Darshan Sud), J.